Notes on Perpetual Peace (Section 1)

Title: Perpetual Peace: A Philosophical Essay
Author: Immanuel Kant
Translator: Mary Campbell Smith

FIRST SECTION
CONTAINING THE PRELIMINARY ARTICLES OF PERPETUAL PEACE BETWEEN STATES

2.—

"No state having an independent existence
—whether it be great or small—
shall be acquired by another through inheritance, exchange, purchase or donation." [110]

> Article 2: A) This article applies whether the state is large or small by any means of measurement. B) States have an independent existence. C) No state shall be acquired by another state through purchase, exchange, donation, or inheritance.

[110] "Even the smoothest way," says Hume, (Of the Original Contract) "by which a nation may receive a foreign master, by marriage or a will, is not extremely honourable for the people; but supposes them to be disposed of, like a dowry or a legacy, according to the pleasure or interest of their rulers." [Tr.]

> Disposing of a nation by marriage to another state, or by passing the state to another after the death of one ruler, supposes the people of that subject nation to be disposed of according to the pleasures or interests of their rulers.
>
> Since this is the means of transferring rulers which involves the least resistance, and is herein provided for as immoral, others methods are not discussed.
>
> SUPPOSE: transitive verb, 1, to assume something, without reference to its being true or false, for the sake of argument or for the purpose of tracing the consequences; … 3, to believe or assume as true, in the absence of positive knowledge or of evidence to the contrary. . .
>
> Metaphorically, the people of that subject nation are being treated as a 'dowry' or

a ‘legacy’ and that is not in accord with the way that the people should be honored and respected.

DOWRY: noun, 1, also dower, the money, goods, or estate which a woman brings to her husband at marriage; 2, obsolete, a widow’s dower; 3, a natural gift, endowment, talent, etc.

LEGACY: noun, 1, Law, a gift of property, especially personal property, as money, by will; a bequest; 2, anything handed down from the past, as from an ancestor or predecessor.

David Hume: The Discourses, in Hume’s own words, was “the only work of mine that was successful on the first publication,” and its success was great. Translated into French immediately, “they conferred,” says Professor Huxley, “a European reputation upon their {p-ix} author; and, what was more to the purpose, influenced the later school of economists of the eighteenth century.” On the same head Burton says—“As no Frenchman had previously approached the subject of political economy with a philosophical pen, this little book was a main instrument, either by causing assent or provoking controversy, in producing the host of French works published between the time of its translation and the publication of Smith’s Wealth of Nations in 1776.

OF THE ORIGINAL CONTRACT.

… [P]hilosophers … assert, not only that
- government in its earliest infancy arose from consent or the voluntary combination of the people, but also that,
- even at present, when it has attained its full maturity, it rests on no other foundation.

They affirm that all men
- are still born equal, and
- owe allegiance to no prince or government unless bound by the obligation and sanction of a promise.

And as no man, without some equivalent, would forgo the advantages of his native liberty and subject himself to the will of another,
- this promise is always understood to be conditional, and
- imposes on him no obligation unless he meets with justice and protection from his sovereign.

These advantages the sovereign promises him in return, and
- if he fails in the execution,
- he has broke, on his part, the articles of engagement, and
- has thereby freed his subjects from all obligations to allegiance.

> Such, according to these philosophers, is the foundation of authority in every government, and such the right of resistance possessed by every subject.

For a state is not a property *(patrimonium)(Patrimony)*, as may be the ground on which its people are settled.

> Land may be someone's property.
> States are not property.

It is a society of human beings over whom no one but itself has the right to rule and to dispose.

> A state is a society of human beings.
>
> No one has the right to rule over that state except itself.
>
> No one has the right to dispose of that state except itself.

Like the trunk of a tree, it has its own roots, and to graft it on to another state is to do away with its existence as a moral person, and to make of it a thing.

> Metaphorically, a state is like a tree trunk that has its own roots. If that trunk and root system is grafted to another trunk and root, then the grafted state no longer exists.
>
> Metaphorically, a grafted state would then cease to exist in its own rights as its own person with its own moral structure. A state in that circumstance is no longer a society of human beings, but instead has become merely an inanimate object.

Hence it is in contradiction to the idea of the original contract without which no right over a people is thinkable.[111]

> A ruler does not have a duty-free right over any people.
> Treating a society of people in the same way as an inanimate object is contradicts the promise and duty of offering them justice and protection.

[111] An hereditary kingdom is not a state which can be inherited by another state, but one whose sovereign power can be inherited by another physical person. The state then acquires a ruler, not the ruler as such (that is, as one already possessing another realm) the state.

HEREDITARY: adjective, 1, passing, or capable of passing, naturally from parents to offspring; 2, of or pertaining to inheritance or heredity; 3, existing by reason of feeling, opinions, or prejudices held by predecessors; 4a, Law, descending by inheritance; 4b, Law, transmitted or transmittable in the line of descent by force of law; 4c, Law, holding title, rights, etc. by inheritance.

A society of people has a ruler, but a ruler does not own a society of people.

When leadership is inherited by hereditary descent, the society of people that composes the state is acquiring a leader; the leader is not acquiring the ownership over that society.

Consequently, the society of people that composes the state is placing its sovereign powers into the control of a person.

Accordingly, a society of people cannot be inherited as a property by a person or another state.

Everyone knows to what danger the bias in favour of these modes of acquisition has brought Europe (in other parts of the world it has never been known).

It is historical common knowledge that viewing the purchase, exchange, donation, or inheritance of a society of people in any favorable way has led Europe into danger. In other parts of the world, acquiring a society of people in these ways was historically unknown.

The custom of marriage between states, as if they were individuals, has survived even up to the most recent times,[112] and is regarded partly as a new kind of industry by which ascendency may be acquired through family alliances, without any expenditure of strength; partly as a device for territorial expansion.

ASCENDANT: noun, 1, a position of dominance or controlling influence; possession of power, superiority, or preeminence; 2, an ancestor, forebear; …

The treatment of a society of people as if it is an individual person, or as if it is owned by an individual person, is partly a device for territorial expansion.

Marrying two states together, or marrying two people together along with a society of people that is viewed as their property is partly an industry to produce ascendancy through alliances with particular families.

This custom survives even in recent times.

[112] This has been one of the causes of the extraordinary admixture of races in the modern Austrian empire. Cf. the lines of Matthias Corvinus of Hungary (quoted in Sir W. Stirling Maxwell's Cloister Life of Charles the Fifth, Ch. I., note):—

"Bella gerant alii, tu, felix Austria, nube!
Nam quae Mars aliis, dat tibi regna Venus." [Tr.]
(Let others wage wars, you, happy Austria, in the clouds! For what Mars gives to others, Venus gives you the kingdoms.)

> Treating societies of people as the property of one individual that can be married to the property of another individual creates an extra-ordinary type of acquisition whereby one society can acquire the rewards of an industry that is produced by the efforts of another.

Moreover, the hiring out of the troops of one state to another to fight against an enemy not at war with their native country is to be reckoned in this connection;

> Similarly, it is also an immoral acquisition of another's productivity when a ruler of a society of people provides the troops of that society to help the expansion of another society of people.
>
> If a ruler of a society of people provided the troops of their society to aid another to defend itself from the war of a third state, then this would not be considered the immoral acquisition of another's productivity; this type of aid would be considered as coming to the defense of another society of people.

for the subjects are in this way used and abused at will as personal property.

> The troops of the societies of people are being used, and abused, as the personal properties of a ruler when they are provided to another society when they are not defending themselves in a time of war.
>
> ADDITIONAL NOTES ON ILLUSORY PROMISES AND IMPLIED PROMISES FROM CALAMARI AND PERILLO ON CONTRACTS, 5th:
>
> " … a bilateral contract is void if there is no mutuality of consideration.
>
> If the promise made by one or both parties is illusory or indefinite, it does not constitute consideration.
>
> An illusory promise is an expression cloaked in promissory terms, but which, on closer examination, reveals that the promisor is not committed to any act or

forbearance. …

Courts are now quite willing to consider the context of apparently illusory promises; thus, a promise to perform in the promisor's 'sole, exclusive, and complete discretion' has been held enforceable in the context of the particular set of facts.

…

Consideration supplied by implied promises …

One of the methods of circumventing the illusory promise problem is interpolating into an agreement that otherwise seems illusory the requirement of good faith or reasonableness. …

The leading case is Wood v. Lucy, Lady Duff-Gordon … The court … inferred a promise on plaintiff's part to use reasonable efforts …"

Also see:

unlawful and explicitly stated Marbury had a right to relief. However, by refusing to order the Democratic-Republican administration to deliver the commission, Chief Justice Marshall avoided a confrontation with the Executive Branch in which the Executive Branch would be called upon to take action which it was likely to refuse.

Worcester v. Georgia

In 1832, President Andrew Jackson took no action to enforce the decision of the Supreme Court that Georgia was unconstitutionally imprisoning two missionaries to the Cherokee, in violation of federal treaties with the tribe, notwithstanding his constitutional duty to "take Care that the Laws be faithfully executed."[5]

By the 1820s, members of the Cherokee tribe resided in northern Georgia and eastern Tennessee on farms, churches, and schools virtually identical to those of their white neighbors. Despite the earlier rancor generated by the Cherokees' having sided with the British in the American Revolution, the Cherokee had signed a series of treaties with the United States which guaranteed the Cherokee lands in Georgia and promised to protect them.

In 1802, however, the federal government had promised Georgia it would try to extinguish Native American titles to land in the state in return for Georgia's ceding to the United States its claims to western lands. By 1824, Georgia complained that the federal government was not acting quickly enough. When President Monroe declared that the federal government would only use peaceful means to relocate the Native Americans, Georgia decided to take action itself. The discovery of gold on the Cherokee lands in the late 1820s only aggravated the problem.[6]

Georgians entered Cherokee territory to work gold mines in violation of federal and Cherokee laws prohibiting settling or trading on Cherokee lands without a license. Moreover, the Georgia legislature passed laws confiscating Cherokee lands, nullifying Cherokee laws on the confiscated lands, forbidding from a criminal case in the Georgia state courts. Asserting jurisdiction over Cherokee territory, a state court convicted a Cherokee named George Tassel of murdering another Cherokee on Cherokee land. Representing Tassel were William Wirt, formerly the attorney general of the United States under Monroe and Adams (and the 1832 candidate for President from the Anti-Masonic Party), and John Sergeant (the 1832 vice presidential nominee of the National Republicans). Following an established procedure, they appealed the conviction to the U.S. Supreme Court. The state judge forwarded the Supreme Court's notice of the appeal and writ of error to Georgia Governor George Gilmer. Gilmer sent the notice to the state legislature, with a note that "orders received from the Supreme Court in any manner interfering with decisions of the courts of the state … will be disregarded." The legislature not only adopted a resolution refusing to compromise the state's sovereignty by becoming involved in the Supreme Court case, but authorized Tassel's execution, which occurred two days later.

Shortly after Georgia ignored the Supreme Court in *Tassel*, Wirt and Sergeant filed in the Supreme Court an action on behalf of the Cherokee against Georgia. They sought an injunction barring Georgia from enforcing Georgia laws within the Cherokee territory. Georgia again ignored the suit, neither filing an answer nor appearing at oral argument. Wirt declared at oral argument that concerns about the Court's ability to enforce its own orders should not deter the Court from exercising its prescribed jurisdiction.

> If we have a government at all, there is no difficulty. … In pronouncing your decree you will have declared the law; and it is part of the sworn duty of the President of the United States to "take care that the laws be faithfully executed." … It is your function to say what the law is. It is his to cause at to be executed. If he refuses to perform his duty, the constitution has provided a remedy.[7]